IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 1271/2007
(Braj Lal Vs. State of Rajasthan & Ors.)

Date of Order : 28/03/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Prakash Sharma for the petitioner.

BY THE COURT:-

Heard learned counsel for the petitioner.

By the instant writ petition, the petitioner seeks regularisation on the post of Village Secretary. During the course of arguments, learned counsel for the petitioner fairly conceded that there is no sanctioned post of Village Secretary, but the petitioner has been serving on the post since last 10 years.

In Secretary, State of Karnataka & ors. Vs. Uma Devi (3) & ors., (2006) 4 SCC 1, held as under:-

> "It was then contended that the rights of the employees thus appointed under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more

> wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employees should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

In State of Bihar Vs. Kameshwar Prasad Singh 2000 (9) SCC 94 while considering the case in which there was no sanctioned post, the Apex Court held that it is now well settled when a post is not sanctioned, normally, directions for reinstatement should not be issued. Even if some posts were

available, it is for the Board or the Market Committee to fill up the same in terms of the existing rules.

In M.P. Housing Board and Another Vs. Manoj Shrivastava (2006) 2 SCC 702, Hon'ble Supreme Court held that it is now well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularised in service.

In State of Karnataka Vs. KGSD Canteen Employees Welfare Association (2006) 1 SCC 567 Hon'ble Supreme Court observed as under :-

> "The question which now arises for consideration is as to whether the High Court was justified in directing regularisation of the services of the respondents. It was evidently not. In a large number of decisions, this Court has categorically held that it is not open to a High Court to exercise its discretion under Article 226 of the Constitution either to frame a scheme by itself or to direct the State to frame a scheme for regularising the services of ad hoc employees or daily-wage employees who had not been appointed in terms of the extant service rules freamed either under a statute or under the proviso to Article 309 of the Constitution. Such a scheme, even if framed by the State, would not meet the requirements of law as the executive order made under Article 162 of the Constitution cannot prevail over a statute or statutory rules framed under the proviso to Article 309 thereof. The State is obligated to make appointments only in fulfilment of its constitutional obligation as laid down in Articles 14,15 and 16 of the Constitution and not by way of any regularisation scheme. In our constitutional scheme, all eligible persons similarly situated must be given opportunity to apply for and receive considerations for appointments at the hands of the authorities of the State. Denial of such a claim by some officers of the State time and again had been deprecated by this Court. In any view, in our democratic polity, an authority howsoever high it may be cannot act

> in breach of an existing statute or the rules which hold the field."

Similar view has been taken by Hon'ble Supreme Court, reference may be made to Madhyamik Shiksha Parishad, U.P. Vs. Anil Kumar Mishra (2005) 5 SCC 122, Executive Engineer, ZP Engineering Divn. Vs. Digambara Rao, (2004) 8 SCC 262, Dhampur Sugar Mills Ltd. Vs. Bhola Singh (2005) 2 SCC 470, Manager, Reserve Bank of India Vs. S. Mani (2005) 5 SCC 100.

In this view of the matter, keeping in view the decisions of Hon'ble Supreme Court referred herein above and the fact as admitted that there is no sanctioned post of Secretary, the petitioner cannot claim regularisation on the said post. I do not find any ground to interfere in the inherent jurisdiction. The writ petition is, therefore, dismissed. There shall be no order as to costs.

(H.R.PANWAR),J.

RP.